IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.5 OF 2001

IN

WRIT PETITION (L) NO.2020 OF 2000

Smt.Sayali Sunil Pagare. ...Appellant.

vs.

1.The Superintendent for Private Primary Schools & others. ...Respondents.

Mr.R.V.Govilkar i/b. P.A.Pashte, for Appellant.

None for Respondents.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 9th August,2007.

P.C.:-

1. By this appeal the original petitioner who had filed Writ petition (lodg) no.2020 of 2000 challenges the order dated 18.10.2000 passed by the learned Single Judge of this Court. The petitioner-appellant had filed a petition challenging the order issued by the management, under which she was working as a teacher in primary school, terminating her services. The reason given in the order for termination of services of the appellant was that the strength of divisions has gone down. An affidavit was filed in reply on behalf of the respondents. In paragraph 3 of that affidavit, details were given of the divisions i.e. the number of divisions when the petitioner was appointed and the number of divisions when her services were terminated. It may be pointed out that the

services of the petitioner were terminated on completion of one year service. A rejoinder was filed by the petitioner. In the rejoinder, the position that the number of divisions came down is not disputed, however, it was claimed that due to retirement of one teacher one post of primary teacher has become vacant. The learned Single Judge rejected the petition by order dated 18.10.2000. The learned Single Judge held that apart from the number of divisions comming down, the petitioner also did not have appropriate qualification. The learned Counsel appearing for appellant submitted that the qualification of Diploma in Education (D.Ed.) is prescribed for primary teacher working in the school to which the provisions of Maharashtra Employees of Primary Schools (Conditions of Service and Regulation) Act are applicable. According to the learned Counsel, qualification for appointment of teacher in primary schools which are given Grant-in-Aid by the Bombay Municipal Corporation

are governed by the Grant-in-Aid Code and there requirement is that a teacher should be trained teacher. The Grant-in-Code does not lay down that the training qualification should be D.Ed and not B.Ed. The learned Counsel also submits that it was pleaded by the petitioner in the reply submitted to the School Board that due to retirement of one teacher, post of one assistant teacher has become vacant. The appellant has also pleaded in the rejoinder filed in the petition that post of one teacher is vacant because of retirement of one teacher. The learned Counsel has also pointed out that the Corporation has issued a circular dated 5.5.1998 in relation to the teachers who are rendered surplus. According to the learned Counsel, the appellant was entitled to the benefit of that circular.

2. So far as the first submission of the learned Counsel is concerned, perusal of Rule 6 of the Grant-in-Aid Code on which reliance is

placed by the learned Counsel shows that it lays down that it is desirable to have as many trained teachers as possible. The term “trained teacher”, even according to the learned Counsel appearing for appellant, is not defined by the Grant-in-Aid Code. The Maharashtra Employees of Primary Schools (Conditions of service and regulation) Act applies to the primary schools in State of Maharashtra. The Government as the Rule making authority under the M.E.P.S.Act after considering the curriculum of D.Ed and B.Ed. has laid down in the Rules framed under the M.E.P.S.Act the appropriate teaching qualification for the teachers working in primary schools is D.Ed. In our opinion, it cannot be said that the management is being unreasonable if it insists on a teacher who teaches in primary school should have D.Ed. qualification. It is further to be seen that in view of the affidavit filed on behalf of the respondents, it is clear that one division was reduced in the school. It

is possible that the consequence of reduction of one division, may be that services of more than one teacher became surplus. In our opinion, it is a matter to be looked into by the management and the authorities of Education department. In view of the clear affidavit filed by the management stating that because the number of divisions came down, the petitioner who was junior most teacher became surplus, in our opinion, no fault can be found in the order of the learned Single Judge rejecting the petition. It is possible that though one post of teacher became vacant because of retirement, still because of reduction of strength of division, the services of petitioner may have become surplus. So far as the reliance placed on the circular is concerned, even according to the learned Counsel, the pleadings in relation to that circular are not to be found, hence, reliefs under this circular are not claimed. Perusal of that circular shows that it is in line with the

provisions in Maharashtra Employees of Primary Schools Act. It requires that when any vacancy in a school is to be filled in, first preference it is to be given to the candidates whose names are found in the list of surplus teachers maintain by the authority. This circular does not have any provision which is relevant for deciding whether the termination of the services of the petitioner is valid or invalid, and therefore, in our opinion, that circular is not relevant for deciding the appeal. In the result, therefore, we find no substance in the appeal. The appeal is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)